

REMARKS

Prior to the present response, claims 1-24 were pending. By the present response, claims 1, 10, 11 and 15 are amended, and claims 8 and 9 are canceled without prejudice or disclaimer. Accordingly, claims 1-7 and 10-24 are pending, with claims 17-24 being withdrawn from consideration by the examiner.

On page 2 of the Office Action, the Examiner withdraws the requirement to elect a single species from each of species characterized by the Examiner as “Species Group I” and “Species Group II.” However, the Examiner’s reasons for withdrawal are believed inappropriate and improper. Specifically, in section 1 on page 2, the Examiner states:

It should be noted that the Species Groups recited in the Restriction Requirement of March 12, 2009, appear to be obvious embodiments over each other and therefore the Species restriction is hereby WITHDRAWN.

Applicants respectfully disagree with the Examiner’s conclusory statement that the characterized species are “obvious embodiments over each other” and respectfully submit that each claim stands alone and should be examined on its own merits. See PCT Rule 13.4, which permits a reasonable number of dependent claims claiming specific forms of the invention claimed in an independent claim.

Additionally, in section 2 spanning pages 2-3, the Examiner maintains the withdrawal of claims 17-24 and finalizes his restriction requirement with respect to these claims. In response Applicants maintain that a proper restriction consistent with unity of invention practice under the PCT has never been presented, for reasons previously stated in Applicants’ response/election dated April 13, 2009.

Also on page 3, the Examiner objects to the specification for containing references to specific claims. By the above amendments, the references to particular claims are removed. It is believed these changes address the Examiner’s concerns regarding the specification.

On page 4, claims 1-16 are rejected under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite. In particular, the Examiner asserts that the feature recited in claim 1 directed to sealing against environmental influences is unclear. While Applicants disagree that one of ordinary skill in the art would find this claimed feature unclear, especially when read claim 1 in light of the specification, claim 1 has been amended to recite that “the transponder arrangement ... is sealed against environmental influences including one of

water, suds, chemical cleaning agents and heat.” The added features are supported at least by the sentence spanning pages 7-8 of the original specification. It is respectfully submitted that this amendment makes the claimed features of environmental influences abundantly clear. Accordingly, this rejection under Section 112 should be withdrawn.

Moving on now to the art rejections, pages 4-5 of the Action include a rejection of claims 1-3, 5-7 and 16 under 35 U.S.C. § 102(b) as being anticipated by Tirkkonen (WO 01/75843). In response, independent claim 1 is amended to incorporate the features of claims 8 and 9. Because claims 8 and 9 have not been rejected using the Tirkkonen publication, it is respectfully submitted that independent claim 1, and hence also claims 2, 3, 5-7 and 16 depending from claim 1, are allowable in view of the Tirkkonen document taken alone.

Next, claims 1-3, 5, 7-10, 15 and 16 are rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Baldwin (U.S. 5,982,284); claim 4 is rejected under Section 103(a) as being obvious over Baldwin in view of Matsuzaki (U.S. 4,783,646); and claims 6 and 11-14 are rejected under Section 103(a) as being obvious over Baldwin in view of Tirkkonen. These rejections are traversed.

Starting with the Baldwin patent, the Examiner contends that the combination of features now recited in independent claim 1 are taught in column 1, line 14 to column 2, line 59; column 3, line 6 to column 5, line 48; and Figures 1-4 of Baldwin’s disclosure (see, the first paragraph of page 6 of the Office Action).¹ However, contrary to the Examiner’s assertions, the Baldwin patent does not describe, teach, suggest or infer an additional textile layer consisting of an upper label, as claimed, much less use of a additional textile layer.

More specifically, the Baldwin patent describes a label with an electronic device laminated between a first sheet 12 and a further sheet 36. These two sheets are laminated to the electronic device by adhesive layers 18 and 42 (see Figure 4). Baldwin discloses different paper materials for the sheets 12 and 36 (column 3, line 46 to 51). As disclosed at different text passages, for example, column 1, line 17 to 20 or column 3, lines 39 and 40, the label and such the outer sheets should be suitable for printing variable information on both sides of the label. Baldwin does not suggest a textile layer which consists of an upper layer which is bonded to the label by means of the second adhesive layer. Baldwin discloses only paper

¹ As amended herein, independent claim 1 now include the features of dependent claims 8 and 9.

layers which should be printed with information. A person skilled in the art would not substitute such a paper layer with a textile layer, because the printing methods for the paper layers then would no longer be applicable. A label according to Baldwin would be used as a pricing label and/or for marking with barcodes merely for the use as an anti-theft tag which will be removed after purchase of the labeled product. There is no need to substitute the paper layer according to Baldwin by a more resistant layer such as a textile layer which consists of an upper layer as claimed in amended claim 1, which is resistant against washing and cleaning.

Furthermore, it is respectfully submitted that the Examiners assertion that paper is a textile layer, as claimed, is unreasonable. While Applicant does describe, at page 1 of the specification, that textiles can be fibrous material texture of the nonwoven type, this passage is referring to “nonwoven formed fabrics.” Moreover, while some nonwoven formed fabrics can be considered to have characteristics that are “paper-like,” they are not paper and one of ordinary skill in the art would understand that the meaning of “textile” does not include paper.

For at least these reasons, the Baldwin patent neither anticipates nor renders obvious the combination of features set forth in amended independent claim 1. Accordingly, the rejection(s) based on Baldwin alone should be withdrawn.

With respect to the cited Matsuzaki patent, which was applied to reject the features of dependent claim 4, this patent does not deal with the sealing of a chip within a label, and even less with the sealing with two adhesive layers. There is simply no suggestion to a person of ordinary skill in the art for sealing a transponder arrangement by means of two adhesive layers, let alone an additional textile layer consisting of an upper label bonded to the remainder of the label by means of the second adhesive layer, as claimed. Hence, the Matsuzaki either alone or in combination with the Baldwin patent does not remedy the shortcomings pointed out above with respect to the Baldwin patent and amended independent claim 1.

The Tirkkonen publication describes a smart label which may be attached to a textile material. The label comprises a chip 2 fixed to the label 1 with an adhesive layer 3 and a back film 4 (see, Figure 2 and page 5, lines 20-26). As described on page 4, line 37 to page 5, line 5, an electroconductive ink is printed on the back film or a metal film is etched or

punched to manufacture the antenna of the smart label. Therefore, the use of a foil is mandatory in combination with a label according to Tirkkonen. A substitution of such a foil with a textile layer is not suggested. Further, manufacture the antenna of the chip as disclosed by Tirkkonen would not be realizable if a textile label were to be disposed as the back film, since electroconductive ink could not be printed on a textile label so as to form an antenna for a RFID chip. Thus, Tirkkonen would appear to teach away from use of a textile upper label as recited in amended claim 1.

Even a combination of the cited Baldwin, Matsuzaki and Tirkkonen documents does not teach or suggest a sealing of a transponder arrangement with two adhesive layers and to bond two textile layers to each of the adhesive layer, as recited in amended independent claim 1. Accordingly, the features of the amended independent claim 1 would not have been obvious for a skilled person knowing the cited documents.

Claims 2-7 and 10-16 depend from allowable independent claim 1, and therefore are also allowable. Furthermore, these dependent claims recite combinations of features defining additional separately patentable distinctions not suggested by the applied art.

Based on the foregoing, the Examiner is requested to withdraw the pending rejections and objections, and allow the present application. Prompt notification of the same is earnestly sought.

Should the Examiner believe a conference would be of benefit in expediting the prosecution of the instant application, he is hereby invited to telephone the undersigned to arrange such a conference.

While fees are believed to be due with the filing of this paper, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-4525.

Respectfully submitted,

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